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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/814,880

03/31/2004

Anat Shiloach

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07/10/2006

UNILEVER INTELLECTUAL PROPERTY GROUP

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EXAMINER

MRUK, BRIAN P

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 07/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,880

Applicant(s)

SHILOACH ET AL.

Examiner

Brian P. Mruk

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-29 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This Office action is in response to Applicant's amendment filed May 4, 2006. Applicant has amended claims 1, 21 and 27. Currently, claims 1-29 remain pending in the application.
2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office action, Paper No. 20051229.
3. The objection of claim 21 is withdrawn in view of applicant's amendments and remarks.
4. The rejection of claim 27 under 35 U.S.C. 112, second paragraph, is withdrawn in view of applicant's amendments and remarks.
5. The rejection of claims 1-29 under 35 U.S.C. 102(b) as being anticipated by Hitchen, EP 463,780, is maintained for the reasons of record.
6. The rejection of claims 1-29 under 35 U.S.C. 102(e) as being anticipated by Shana'a et al, U.S. Patent No. 6,737,394, is maintained for the reasons of record.

7. The rejection of claims 1-29 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,906,015 is withdrawn in view of applicant's timely filed Terminal Disclaimer.

8. The provisional rejection of claims 1-29 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-28 of copending Application No. 11/071,014 is maintained for the reasons of record.

NEW GROUNDS OF REJECTION

Claim Objections

9. Claim 14 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Specifically, the examiner notes that independent claim 1, from which claim 14 depends from, has been amended to recite that the solid particulate optical modifier is present in a concentration of at least about 0.2% by weight, as required in dependent claim 14. Thus, claim 14 fails to further limit claim 1.

Response to Arguments

10. Applicant's arguments filed May 4, 2006 have been fully considered but they are not persuasive.

Applicant argues that Examples 3 and 8 of Hitchen, EP 463,780, do not show the claimed change in skin appearance, and therefore, cannot inherently anticipate the instant claims. However, the examiner asserts that applicant has not compared the claimed subject matter with the closest prior art, as required in *MPEP 716*. Specifically, Hitchen discloses that the titanium dioxide coated mica having a larger average diameter will result in a glittery shampoo composition (see page 4, lines 2-8). Therefore, the examiner asserts that Examples 4 and 5 of Hitchen, EP 463,780, represent the teachings of the closest prior art of record, since Examples 4 and 5 contain titanium dioxide coated mica having a larger average diameter than those of Examples 3 and 8. Therefore, the examiner asserts that applicant's 1.132 Declaration is insufficient to overcome the rejection over Hitchen, EP 463,780.

Applicant argues that Shana'a et al, U.S. Patent No. 6,737,394, no longer anticipates the instant claims, since Shana'a et al does not teach the minimum concentration of solid particulate optical modifiers required in the newly amended claims. However, the examiner respectfully disagrees. Specifically, Shana'a et al clearly teaches that the organogel particles are present in an amount of 0.1-25% by weight (see col. 4, lines 13-21), as required in the instant claims. Furthermore, note that the Examples in Table 2 of Shana'a et al contain 2.0% by weight of the organogel particles, which meet the requirements of the presently claimed invention.

The examiner maintains that instant claims 1-29 are still an obvious formulation in view of claims 1-28 of copending Application No. 11/071,014. It is also noted that this double patenting rejection is not the only rejection remaining in the application.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Mon-Thurs (7:00AM-5:30PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BPM
Brian P Mruk
July 4, 2006

Brian P. Mruk
Brian P Mruk
Primary Examiner
Art Unit 1751